

DECISION

120198
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-210024**DATE:** December 21, 1982**MATTER OF:** Technical Food Services, Inc.**DIGEST:**

1. Protest by incumbent contractor that manning requirements of new solicitation for mess attendant services are defective is dismissed as untimely since alleged impropriety was apparent upon receipt of solicitation and protest was not filed in GAO until after bid opening.
2. Protest by incumbent contractor that it will be impossible for awardee to perform at its bid price because that price is lower than the price at which the protester performed at a loss under previous contract and because the new contract has an increase of 30 percent in manning requirements, is dismissed since whether awardee will fulfill its contractual obligations is a matter of contract administration not reviewable by GAO.

By telegram filed here on December 1, 1982, Technical Food Services, Inc. protests the award on November 26, 1982, of a contract for mess attendant services by the Navy under solicitation No. N00612-82-B-0191. Technical contends that (1) the specifications were defective and (2) because of the IFB's manning requirements, the awardee, BH Services, will be unable to perform at its allegedly below-cost bid. We dismiss the protest without consideration of its merits. The protest directed at the specifications is untimely, and the allegation that BH Services will not satisfactorily perform its contract concerns a matter of contract administration that is not reviewable under our Bid Protest Procedures.

Technical, the incumbent contractor, contends that the manning documents attached to the specifications were taken from its previous contract, and since the new solicitation requires 30 percent more work, the old manning requirements should not have been used.

In our Bid Protest Procedures, we require that protests based upon alleged improprieties in any solicitation which are apparent prior to bid opening be filed before the bid opening date. 4 C.F.R. §21.2(b)(1) (1982). As the incumbent contractor for these services and as a bidder on the present solicitation, Technical had notice of the alleged specification improprieties upon receipt of the solicitation. It was incumbent upon Technical, therefore, to file a protest on this ground by the bid opening date. Since bids were opened on September 3, 1982, the protest received here on December 1 is untimely filed.

Technical's next contention is that BH Services will not be able to perform satisfactorily at its bid price. Technical asserts that it was losing money in the performance of the previous contract at a price of \$17,462.62 per month, and that it submitted a per-month bid of \$28,500 under the present solicitation which, it states, also compensates for the 30 percent increase in manning requirements. Since BH Services bid only \$15,833 per month, \$1,629.62 less than Technical's price on the previous contract, Technical maintains that BH's costs will be substantially greater than the income resulting from the award, and that it will be "impossible" for BH Services to perform.

The submission of a below-cost bid alone provides no basis to disturb an award. Tombs & Sons, Inc., B-206810.2, May 10, 1982, 82-1 CPD 447; Karadis Bros. Painting Co., Inc., B-187524, November 22, 1976, 76-2 CPD 440. Whether BH Services actually will perform in accordance with the terms of its contract is a matter of contract administration which does not relate to the propriety of award and which is not a matter for consideration under our Bid Protest Procedures, 4 C.F.R. Part 21. Hybrid Abstracts, B-207083, May 24, 1982, 82-1 CPD 488. This is the responsibility of the procuring agency, in this case, the Navy.

Accordingly, the protest is dismissed.

Harry R. Van Cleve

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Acting General Counsel